

STATE OF MICHIGAN  
COURT OF APPEALS

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LILY Y. GEE, ROBERT E. HOLLENSHEAD,  
JOHN D. WARBACH, MARILYN R.  
WARBACH, TIMOTHY MCCARTHY, and  
BRIDGET MCCARTHY,

UNPUBLISHED  
November 9, 2006

Plaintiffs/Counter Defendants-  
Appellees,

v

JEFFERY HOWARD and MARY HOWARD,

No. 269732  
Ingham Circuit Court  
LC No. 05-000937-CH

Defendants/Counter Plaintiffs-  
Appellants.

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Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order that granted plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties in this case own lots in the Lakeview Subdivision in Meridian Township. Plaintiffs' properties lie adjacent to Lake Lansing while defendants own an inland lot. The subdivision contains several roadways running perpendicular to the lake and dedicated by the subdivision's plat to the use of the lot owners. At the end of one of these roadways, Bass Street, defendants installed a dock and used the structure as a place to moor their pontoon boat. Plaintiffs filed suit seeking a declaratory judgment that defendants' actions violated their right to shared use of the road end. The trial court granted summary disposition in favor of plaintiffs, finding that the dedication did not grant individual lot owners the right to install a dock at the road end and that this right belonged to the subdivision owners as a whole. It therefore declared that defendants exceeded the scope of the dedication and infringed upon the rights of the other lot owners. The instant appeal followed.

The decision to grant or deny summary disposition presents a question of law that we review de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine

issue as to any material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A question of material fact exists “when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.*

On May 28, 1903, the plattors of the Lakeview Subdivision dedicated the streets shown on the plat “to the use of the lot owners.” The dedication of land for private use in a plat conveys “at least an irrevocable easement in the dedicated land.” *Little v Hirschman*, 469 Mich 553, 564; 677 NW2d 319 (2004). Whether defendants may install a dock at the end of Bass Street depends upon whether such activity lies “within the scope of the plat’s dedication.” *Thies v Howland*, 424 Mich 282, 289; 380 NW2d 463 (1985). “The intent of the dedicator is to be determined from the language used in the dedication and the surrounding circumstances.” *Higgins Lake Property Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 99; 662 NW2d 387 (2003), quoting *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667, 672; 502 NW2d 382 (1993).

As in the instant case, the defendants in *Thies* owned inland lots in a subdivision abutting a lake. *Thies, supra* at 286. The plaintiffs, who owned lots along the lake shore, sought to enjoin the defendants from maintaining a dock and anchoring their boats in the lake. In deciding the case, our Supreme Court examined three types of easements that could possibly allow defendants access to the lake. *Id.* at 295-297. These were: (1) a twelve-foot wide walkway running parallel to the lakeshore and dedicated to “the joint use of” the owners lots in the subdivision; (2) a limited easement granting defendants the right to cross plaintiffs’ property; and (3) a series of alleyways running perpendicular to the lake designed to provide access to the lake and similarly dedicated. *Id.* at 289-290, 293, 295-297.

The Court in *Thies* determined that neither the terms of the parallel easement nor those of the easement over the plaintiffs’ lot granted defendants permission to install a dock. But it noted that, had defendants installed their dock at the terminus of an alley, a different outcome would result. Specifically, the Court stated:

Public ways which terminate at the edge of navigable waters are generally deemed to provide public access to the water. A city, on behalf of its citizens, is entitled to build wharves at the end of such streets to aid the public’s access. The right to build a wharf or dock does not depend on whether the public owns the fee in the way. Rather, it is based upon the presumption that the plattor intended to give access to the water and permit the building of structures to aid in that access. Any dock which is constructed at the end of a common way must be made available for the use of those to whom the way is dedicated. The fact that only subdivision owners can use the alleys and docks would not require a different result. [*Id.* at 295-296 (citations omitted).]

Since *Thies*, this Court has applied the presumption regarding access to the water at road ends in several cases. In *Jacobs, supra* at 669, 673, we found that a dedication of a series of road ends to “the use of the Public” permitted the installation of one nonexclusive dock at each end and entitled the public to reasonable use of the water for boating, swimming and fishing. But this Court held that the dedication did not allow the erection of boat hoists or shore activities such as sunbathing, lounging, or picnicking. *Id.* at 673.

Similarly, in *Higgins Lake, supra* at 88, 92, this Court considered the scope of a dedication “to the use of the public” of road ends abutting a lake. After examining *Thies* and *Jacobs*, we concluded:

Lounging, sunbathing, picnicking, and the erection of boat hoists at the road ends are prohibited as beyond the scope of the dedications. Consistent with *Jacobs*, one, nonexclusive dock may be erected at each road end to facilitate public access to the water. Members of the public are entitled to moor boats temporarily as an incident of the public’s right of navigation. Because the plat language and the applicable law dictate that the road ends are intended to afford access to the public, private docks are not permitted at the road ends. [*Id.* at 104 (citations omitted).]

Under *Thies*, the dedication of the Bass Street road end to the use of the subdivision lot owners creates a presumption that the plattors intended to give the lot owners access to the water and permit the building of structures to aid in that access. Had the dedication been made to the public, the local government would have had the right to build a nonexclusive dock for their use. *Id.* But no individual members of the public would have had the right to install a private dock. *Higgins Lake, supra* at 104. And the public would only be entitled to temporarily moor boats at the road end as an incident of their right of navigation. *Id.* As our Supreme Court stated in *Thies, supra* at 296, the fact that only subdivision owners can use the road end does not require a different result.

Consequently, the trial court did not err in granting plaintiffs’ motion for summary disposition. The dedication grants the right to install a dock to the subdivision lot owners as a whole rather than to any individual owner. Lot owners may only temporarily moor their boats at the road end in accord with their right of navigation. By installing a dock and mooring their pontoon boat there, defendants exceeded the scope of the dedication and infringed upon the rights of the other lot owners.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio